

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES SMITH, on behalf of himself and)	
all others similarly situated, and on behalf of)	NO.: 1:20-CV-02350
the TRIAD MANUFACTURING, INC.)	
EMPLOYEE STOCK OWNERSHIP PLAN,)	
)	JUDGE: GUZMAN
Plaintiffs,)	
)	
vs.)	MAG. JUDGE: KIM
)	
GREATBANC TRUST COMPANY; THE)	
BOARD OF DIRECTORS OF TRIAD)	
MANUFACTURING, INC; DAVID)	
CAITO; ROBERT HARDIE; and)	
MICHAEL McCORMICK,)	
)	
Defendants.)	

**MOTION TO COMPEL ARBITRATION OR
IN THE ALTERNATIVE DISMISS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 12(b)(3) or 12(b)(6)**

NOW COME the Defendants, the Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, and Michael McCormick (collectively, the “Triad Defendants”), and hereby request this Honorable Court compel arbitration pursuant to a mandatory arbitration clause in the plan document for the Triad Manufacturing, Inc. Employee Stock Ownership Plan (“Plan”). In the alternative, the Triad Defendants request this Court dismiss this lawsuit pursuant to Fed. R. Civ. P. 12(b)(3) and/or (b)(6). In support thereof, the Triad Defendants state as follow:

1. On April 15, 2020, Plaintiff James Smith (“Plaintiff”) on behalf of himself and the Plan participants and beneficiaries, filed a lawsuit against the Triad Defendants and GreatBanc Trust Company (“GreatBanc”) (collectively, the “Defendants”) alleging that the Defendants violated Sections 502(a)(2) and (a)(3) of the Employee Retirement Income

Security Act of 1974, as amended (“ERISA”) (29 U.S.C. §§ 1132(a)(2) and (a)(3)) arising from the creation of the Plan and the sale of Triad Manufacturing, Inc.’s stock to the Plan at what Plaintiff alleges was an inflated value. (Doc. 1.)

2. As set forth in the Triad Defendants’ Memorandum in Support of this Motion, Plaintiff’s claims are subject to a mandatory arbitration and class action waiver provision that was adopted by the Plan while Plaintiff was a participant.
3. Therefore, Plaintiff is precluded from bringing this action in federal court and further precluded from bringing a class action ERISA claims.
4. Counsel for Triad Defendants’ has discussed the relief sought in this Motion with Plaintiff’s counsel who does not agree to arbitration or dismissal.

WHEREFORE, for all of these reasons, as set forth in detail in the Triad Defendants’ Memorandum in Support of the Triad Defendants’ Motion to Compel Arbitration and/or Dismiss, the Triad Defendants respectfully request that this Honorable Court enter an Order staying the current litigation and compelling arbitration or in the alternative enter an Order dismissing the Plaintiff’s lawsuit pursuant to Fed. R. Civ. P. 12(b)(3) or (b)(6) so that the parties may engage in arbitration.

Respectfully Submitted,

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Attorneys for Board of Directors of Triad
Manufacturing, Inc., David Caito, Robert
Hardie, and Michael McCormick

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on today's date, June 1, 2020, he served a copy of the *Triad Defendants' Motion To Compel Arbitration Or In The Alternative Dismiss And Memorandum in Support thereof* on all parties via electronic service through the CM/ECF filing system, and to all parties unable to receive electronic service, at the address set forth below. In addition, a courtesy copy has not been delivered to the Court due to the suspension of Local Rules pursuant to the United States for the Northern District of Illinois Fourth Amended General Order 20-0012.

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